

## EMERGENCY SUPPLY AGREEMENT

This **Emergency Supply Agreement** (hereinafter "Agreement") is made and entered this 20 day of April, 2003 by and between the **Boone-Florence Water Commission**, 2475 Burlington Pike, P.O. Box 998, Burlington, Kentucky, 41005 (hereinafter, the "Commission"), the **Boone County Water District**, 2475 Burlington Pike, Burlington, Kentucky 41005 (hereinafter, "Boone"), the **City of Florence, Kentucky**, 8100 Ewing Boulevard, Florence, Kentucky 41022 (hereinafter, "Florence") and the **Northern Kentucky Water District**, 100 Aqua Drive, P.O. Box 220, Cold Spring, Kentucky 41076 (hereinafter, "Northern"). Together, the Commission, Boone, Florence and Northern will be referred to herein as the "Parties."

### W I T N E S S E T H:

WHEREAS, the Commission is a water commission organized and operating under Chapter 74 of the Kentucky Revised Statutes for the purpose, among others, of providing a supply of water to Boone, a water district organized and operating under Chapter 74 of the Kentucky Revised Statutes, and Florence, a Kentucky city of the third class; and

WHEREAS, pursuant to an Agreement To Amend Water Contracts And To Provide For Payments And Other Matters Related To Early Termination dated February 29, 2000, Boone and Florence made provisions to terminate their water supply contracts with Northern, a water district organized and operating under Chapter 74 of the Kentucky Revised Statutes, which had provided Boone and Florence with their supply of water for a number of years; and

WHEREAS, Boone and Florence have ceased purchasing their water supply from Northern and have, through the Commission, begun purchasing their water supply from the City of Cincinnati, Ohio, pursuant to a water service agreement dated March 2, 1999 (the "Cincinnati agreement"); and

WHEREAS, the Cincinnati agreement contains provisions relative to the ability of Boone-Florence and the Commission to sell or receive water from other sources in the event of an emergency; and

WHEREAS, the Parties desire to arrange for an emergency supply of water from Northern to the Commission and from the Commission to Northern in the event that either entity requires an emergency supply of water in the future;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties hereby agree as follows:

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
10/2/2004  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

By   
Executive Director

**ARTICLE I**  
**NATURE OF AGREEMENT**

This Agreement is an emergency supply agreement in which the Commission agrees to supply to Northern and Northern agrees to supply to the Commission Surplus Water in the event of an Emergency. For purposes of this Agreement, the term "Surplus Water" shall mean excess water available for supply after the needs of all other retail and wholesale customers of the supplying entity has been met and satisfied. Nothing in this Agreement requires the Commission or Northern to supply any water other than Surplus Water to the other. For purposes of this Agreement, the term "Emergency" shall mean any situation arising from fire, flood, storm, breakdown of a water system or unpotable condition causing an immediate threat to life, health or property.

**ARTICLE II**  
**PURCHASE AND SALE OF WATER**

The Commission and Northern each will contact the other if and when an Emergency arises necessitating an emergency supply of water. The Commission and Northern each agree to supply and sell to the other such Surplus Water as may be required and requested by the other for all Emergencies during the term of this Agreement.

**ARTICLE III**  
**EFFECTIVE DATE AND TERM**

This Agreement will take effect immediately on the date first written above and shall continue in full force and effect until January 31, 2023.


**ARTICLE IV**  
**POINTS OF DELIVERY**

The Commission and Northern shall supply Surplus Water to the other at the following five points of delivery: (1) the Boone County master meter pit located near the intersection of Dixie Highway (US Route 25) and Richardson Road in the City of Florence, Kentucky; (2) the Florence master meter pit located near 7950 Dixie Highway in the City of Florence, Kentucky; (3) the Florence master meter pit located near 7450 Industrial Road in the City of Florence, Kentucky which measures flow from Northern to Florence but not the one that measures flow from Florence to Northern; (4) the Boone County master meter pit located at the end of Holly Lane near Watson Road in the City of Erlanger, Kentucky; (5) the Boone County master meter pit located behind 25 Atlantic Avenue in the City of Erlanger, Kentucky; and (6) the Airport master meter pit to be located near the intersection of Kentucky Route 20 and Interstate 275 in unincorporated Boone County, Kentucky, if and when installed and operational.

**ARTICLE V**  
**USE OF WATER LINES**

The Commission, Boone, Florence and Northern each agree to the use of their respective water lines and appurtenances, without charge, for all purposes related to the emergency supply of water contemplated by this Agreement. The Parties shall not be obligated to make improvements to their respective water systems to provide any emergency supply of water under this Agreement.

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**ARTICLE VI**  
**QUALITY OF WATER**

All Surplus Water supplied by the Commission and Northern shall be potable, treated water meeting all applicable quality and purity standards of all appropriate state and federal regulatory agencies. The Surplus Water shall be of the same quality as the water furnished to the other customers of the Commission and Northern.

**ARTICLE VII**  
**WATER RATES**

The Commission and Northern each shall pay to the other Northern's then existing wholesale rate for all Surplus Water purchased under this Agreement. Northern may, from time to time, increase its wholesale rate but as long as the Kentucky Public Service Commission (hereinafter, the "PSC") has jurisdiction over Northern's rates, no wholesale rate increase will take effect unless and until it has been reviewed and approved by the PSC.

**ARTICLE VIII**  
**FLOW MEASUREMENT**

Northern shall own, operate and maintain the master meter pits described in Article IV above and the master meters located therein. Northern shall make annual tests and inspections of the meters and pits and such other tests and inspections as Northern may deem necessary. No correction will be made in billings unless a test or inspection shows that the metering is more than two percent (2%) slow or fast. If any test or inspection shows that the metering is inaccurate by more than two percent (2%) slow or fast, correction will be made in the billings for the period during which Northern and the Commission agree that the inaccuracy existed. If no such agreement is reached, it will be assumed that the error developed progressively from the date of the last meter test and an appropriate adjustment to billings will be made. All costs of testing, inspecting and maintaining the master meters and master meter pits described in Article IV above shall be shared equally by Northern and the Commission, and the Commission shall reimburse Northern for the Commission's share of all such costs within thirty (30) days of receiving an invoice from Northern. All major repairs or replacements of the master meters and master meter pits must be jointly approved by Northern and the Commission.

**ARTICLE IX**  
**BILLING AND PAYMENT**

The Commission and Northern each shall bill the other on a monthly basis for the full amount due for Surplus Water supplied during the prior month. All bills will be due and payable within thirty (30) days of the date of receipt.

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**ARTICLE X**  
**FORCE MAJEURE**

Except for the payments required under Articles VIII and IX above, either the Commission or Northern may suspend its performance under this Agreement if such Party's performance is prevented or delayed by a cause or causes beyond the reasonable control of such Party which could not have been avoided by the exercise of reasonable diligence by such Party. Such causes may include, but shall not be limited to, acts of God, acts of war, acts of terrorism, riot, fire, explosion, lock-outs or other labor disturbances, breakage or damage to machinery or pipelines, and partial or entire failure of water system. The Party asserting a right to suspend performance must, within a reasonable time of acquiring knowledge of the cause requiring the suspension, notify the other Party in writing of the cause for suspension, the performance suspended and the anticipated duration of the suspension. Performance will be suspended only during the time that it is prevented or delayed by the type of cause or causes described in this Article X, and the Party whose performance is prevented or delayed shall endeavor to remove or overcome the cause or causes with all reasonable dispatch.

**ARTICLE XI**  
**RESPONSIBILITY AND INDEMNIFICATION**

The Commission, Boone, Florence and Northern each shall be responsible for the construction, operation and maintenance of all waterlines and appurtenances of its own water system. Each Party expressly agrees to defend, indemnify and hold harmless all other Parties against all claims, demands, costs and expenses asserted by third parties and proximately caused by its negligence or willful misconduct in connection with the construction, operation or maintenance of its water system.

**ARTICLE XII**  
**APPROVAL OF AGREEMENT**

The Parties understand and agree that this Agreement may require submission to the PSC for approval. If such submission is required, this Agreement shall still take effect on the date first above written but shall be subject to any lawful decision or order of the PSC.


**ARTICLE XIII**  
**ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding and agreement between the Parties and supercedes all other understandings and agreements between the Parties with respect to the subject matter of this Agreement. There are no understandings, representations or warranties of any kind, expressed or implied, not expressly set forth in this Agreement. No modification of this Agreement shall be effective unless in writing and executed on behalf of all Parties.

**ARTICLE XIV**  
**WAIVERS**

The failure of any Party at any time to enforce any provision of this Agreement, to exercise its rights under any provision or to require a certain performance of any provision shall

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Executive Director

The failure of any Party at any time to enforce any provision of this Agreement, to exercise its rights under any provision or to require a certain performance of any provision shall not be construed as a waiver of any such provision or in any way affect the validity of this Agreement or the right of the Party thereafter to enforce each and every provision.

**ARTICLE XV**  
**ASSIGNMENT**

This Agreement shall not be assigned by any Party without the written consent of all other Parties.

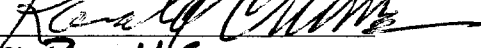
**ARTICLE XVI**  
**AUTHORITY TO EXECUTE AGREEMENT**

The Parties each possess full authority to enter this Agreement as indicated by the lawful resolutions/orders attached hereto as Exhibits A through D. This Agreement may be executed in counterparts.


IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in four originals, one for each Party.

- Exhibit A - Resolution of the Boone-Florence Water Commission
- Exhibit B - Resolution of the Boone County Water District
- Exhibit C - Municipal Order of the City of Florence
- Exhibit D - Resolution of the Northern Kentucky Water District


**BOONE-FLORENCE WATER COMMISSION**

Signature:   
Printed Name: Ronald Crume  
Title: Chairman

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**BOONE COUNTY WATER DISTRICT**

Signature:   
Printed Name: Ronald Crume  
Title: Chairman

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CITY OF FLORENCE, KENTUCKY

Signature: *Diane E. Whalen*  
Printed Name: Diane E. Whalen  
Title: Mayor

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By *[Signature]*  
Executive Director

NORTHERN KENTUCKY WATER DISTRICT

Signature: *Douglas C. Wagner*  
Printed Name: DOUGLAS C. WAGNER  
Title: CHAIRMAN

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By *[Signature]*  
Executive Director